IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

Crl.MC.No. 509 of 2007()

UNNUMBERED CMP./2007 of C.J.M. COURT, THODUPUZHA

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PETITIONER/COMPLAINANT:

ALEXANDER JOSEPH, VATTAKKALAM HOUSE
THODUPUZHA KARA, THODUPUZHA VILLAGE
IDUKKI DIST.

BY ADV. SRI.UNNIKRISHNAN.V.ALAPATT

RESPONDENTS/ACCUSED/STATE:

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1. GEORGE, PARATHALACKAL HOUSE
MUTHALAKKODAM, THODUPUZHA
IDUKKI DIST.

2. STATE OF KERALA , REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 509 of 2007

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Dated this the 26th day of February, 2007

O R D E R

The grievance of the petitioner is that in spite of the production of the original of Annex.II General Power of Attorney executed by his son in his favour, the learned Magistrate is not entertaining a complaint filed by the petitioner on behalf of his son, the payee, alleging commission of the offence punishable under Section 138 of the N.I. Act. The learned Magistrate has returned the complaint filed by the petitioner with the following endorsement:

> "Power of Attorney produced does not show that the complainant has authorised any one to launch prosecution on the basis of the cheque produced. Hence returned to the complainant."

2. The learned counsel for the petitioner submits that the Power of Attorney issued in his favour is a General Power of Attorney. It is for the management of the affairs of a building belonging to the executant of the Power of Attorney that the said document was executed. The present dispute relates to recovery of

amount due by way of rent from the accused/tenant. The recitals in the General Power of Attorney show that it authorises the petitioner to take action before the magesterial authorities also. In these circumstances, the learned Magistrate is not justified in not permitting the petitioner to prefer the complaint as the holder of the Power of Attorney of his son.

3. I shall carefully avoid any detailed discussion on merits about the acceptability of the Power of Attorney as sufficient to enable the petitioner to prosecute the complaint on behalf of his son, the payee. I am certainly of the opinion, after going through the recitals in the Power of Attorney that subject to any objection which the indictee may later raise on the acceptability of the Power of Attorney, the learned Magistrate must receive the complaint under Section 138 of the N.I. Act and proceed further with the matter.

4. This Crl.M.C. is accordingly allowed. The learned Magistrate shall accept the complaint filed by the petitioner as the Power of Attorney of his son and proceed with the matter, subject to any objection which the respondent may raise after his appearance. Such objection shall be considered and appropriate orders passed by the learned Magistrate.

5. Hand over Annex.II to the learned counsel for the petitioner forthwith.

(R. BASANT)
Judge

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